



THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Not Reportable

Case No: JS 274/2024

In the matter between:

BIFAWU obo MORDECAI TSOTETSI

Applicant

and

**OLD MUTUAL INSURE (previously known as Mutual
Federal Insurance Company Ltd)**

Respondent

Heard: 29 August 2025

Delivered: 29 September 2025

JUDGMENT

BALOYIAJ

Introduction

- [1] The defendant raised an exception to the plaintiff's statement of case on account of no cause of action being disclosed, coupled with jurisdictional issues, namely, absence of referral to conciliation, absence of condonation for

the late referral of the dispute to this Court, and res judicata. The exception is opposed and is accompanied by an application for condonation for its late filing, which is also opposed.

Background

- [2] The long history of this matter dates back to the plaintiff's dismissal on 11 September 2018. What is relevant to this exception is the statement of case filed on 13 May 2024, based on the certificate of outcome issued on 27 May 2022. In terms of the certificate of outcome, a recommendation is made that the matter be referred to arbitration after an unsuccessful attempt to resolve the dispute through conciliation. The matter was ultimately scheduled for arbitration, and the CCMA issued a jurisdictional ruling on 28 November 2023. In terms of the ruling, the Commissioner made a finding that the CCMA does not have jurisdiction, but this Court does.
- [3] Consequent to the ruling, the plaintiff referred the dispute to this Court by means of the statement of case, which is the subject matter of the exception before this Court.

The arguments

- [4] In the forefront of the defendant's argument are the jurisdictional factors of failure to refer the dispute to conciliation, together with failure to apply for condonation for having referred the dispute six years after the plaintiff's dismissal. The plaintiff had quickly dealt with the failure to refer to conciliation by referring to the certificate of outcome issued on 27 May 2022. The plaintiff further disputed the defendant's assertion that the matter was referred to this Court out of time. The plaintiff's contention is based on the counting of 90 days from 14 February 2024, which is the date he became aware of the ruling of 28 November 2023. Having filed the statement of case on 13 May 2024, it is according to the plaintiff within the 90 days.
- [5] The plaintiff persisted with this argument until his representative, Mr Nhlapho, after lengthy engagement with the Court, made a submission that he would need time to apply for condonation. He still persisted with the incorrect

reasoning for the explanation for the delay for the intended condonation application, that the applicant was reliant on the ruling, not the certificate of outcome, when calculating the 90 days. He did not dispute that the defendant had, prior to the date of the hearing, brought this to the plaintiff's attention.

Evaluation

- [6] It goes without any doubt that jurisdiction is the prerequisite for the Court to exercise its powers on any particular matter it is called upon to decide. It is permissible for the Court to uphold an exception on jurisdictional factors *ex facie* the particulars of claim.
- [7] The jurisdictional issue in this matter made its way to this Court as part of the exception. It does not arise from the reading of the plaintiff's statement of case. The defendant raised the point based on two issues: firstly, that there was no referral to conciliation at all. Secondly, if the plaintiff was seeking to rely on the certificate of outcome issued in the matter that this Court at some point struck out, the plaintiff had, as such, filed the statement six years late and did not apply for condonation. It was only through the plaintiff's opposition to the defendant's application for condonation of the late filing of the exception that this specific dispute was referred to conciliation. The certificate of outcome was issued on 27 May 2023, and a ruling pronouncing the CCMA lacking jurisdiction was made on 28 November 2023.
- [8] In the defendant's arguments, the jurisdictional issue appeared to have evolved and reflected on the lateness of the filing of the statement, being calculable from the expiry of 90 days after 27 May 2025. This indeed came to the attention of the plaintiff and this Court for the first time on the date of the hearing, as conveyed through heads of argument that were handed up at the commencement of arguments. This point is correctly raised. A party whose prosecution of the case or defence is out of time has a duty to file a condonation application as soon as it becomes aware of lateness. With the plaintiff becoming aware of the need to apply for condonation on the date of the hearing, coupled with the absence of evidence that the plaintiff was previously alerted to specific non-compliance, it will not be in the interest of

justice to deny the plaintiff an opportunity to apply for condonation of this late filing.

[9] The Court is therefore enjoined to determine the merit of the exception of statement of case of the matter that is properly before the Court. The determination of the merit of the exception should, under the circumstances, be deferred pending the determination of the condonation application.

[10] In the premises, the following order is therefore made:

Order

1. Condonation application for the late filing of the exception is granted insofar as it may be necessary.
2. The determination of the exception is deferred pending the determination of the application for condonation of the late filing of the statement of case.
3. The plaintiff is directed to file the application for condonation of the late filing of the statement of case within 10 days of receipt of this order.
4. There is no order as to costs.

MM Baloyi

Acting Judge of the Labour Court of South Africa

Appearances:

For the Applicant: Mr Nhlapho

Union Official

For the Respondent: Mr JJ Van der Walt

Of Cliffe Dekker Hofmeyr attorneys